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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/808,864	03/15/2001	Jigish D. Trivedi	MIO 0079 PA	5568

7590

08/19/2003

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EXAMINER

FOONG, SUK SAN

ART UNIT

PAPER NUMBER

2823

DATE MAILED: 08/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/808,864

Applicant(s)

TRIVEDI ET AL.

Examiner

Suk-San Foong

Art Unit

2823

--Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 August 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☒ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

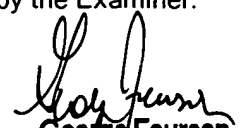
Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-16, 21-28 and 31-40.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☒ Other: See Continuation Sheet

  
George Fourson  
Primary Examiner

Continuation of 2. NOTE: The proposed amendments changing the scope to claims 1-8,10,11,13-16,31 and 40, and claims dependent thereon raise new issues that would require further consideration and/or search. Applicant does not point to support in the disclosure as originally filed for the proposed amendments.

Continuation of 5. does NOT place the application in condition for allowance because :

Applicant argues that neither AAPA nor Kiziyalli suggests the nitrogen or argon-rich region 50 is replaced with an oxide region. However, the rejection is based on the disclosure of Kiziyalli for forming barrier layer 50 comprised of nitrogen or argon-rich region in minimizing dopant diffusion between the polysilicon layer and metal silicide layer (Col. 1, lines 53-55) and the disclosure of Shibata for forming oxide layer 8 between metal silicide layer 4 and polysilicon layer 3 as a diffusion layer for inhibiting impurity diffusion between metal silicide layer 4 and polysilicon layer 4 (Col. 2, lines 23-35, and Col. 3, lines 59-64) or, alternatively, the disclosure of Liu for forming oxide diffusion barrier layer between metal silicide layer and polysilicon layer for preventing diffusion of dopants from polysilicon layer into metal silicide layer (Col. 1, lines 46-50 and Col. 2, lines 42-52). It would have been within the scope to one ordinary skill in the art to combine the teachings of the combination of AAPA and Kiziyalli with either Shibata or Liu to enable formation of barrier layer 50 to be performed. It has been established that art recognized suitability for an intended purpose is indeed motivation to combine (MPEP 2144.07).

Applicant argues that Liu "teaches away" from using an oxide layer as a barrier layer by disclosing problems associated in using oxide layer as barrier layer. However, this is not a teaching that the process would be inoperative. Furthermore, this argument is respectfully traversed because, although not taught as a preferred embodiment, Liu teaches this embodiment nonetheless, and disclosed examples and preferred embodiments do not constitute a teaching away from a broader disclosure or nonpreferred embodiments. MPEP 2123. In re Susi, 169 USPQ 423 (CCPA 1971). "A known or obvious composition does not become patentable simply because it has been described as somewhat inferior to some other product for the same use." In re Gurley, 31 USPQ2d 1130, 1132 (Fed. Cir. 1994). A reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill in the art, including nonpreferred embodiments. Merck & Co. v. Biocraft Laboratories, 874 F.2d 804, 10 USPQ2d 1843 (Fed. Cir.), cert. denied, 493 U.S. 975 (1989). Even a teaching away from a claimed invention does not render the invention patentable. See Celeritas Technologies Ltd. v. Rockwell International Corp., 150 F.3d 1354, 1361, 47 USPQ2d 1516, 1522-23 (Fed. Cir. 1998), where the court held that the prior art anticipated the claims even though it taught away from the claimed invention. "The fact that a modem with a single carrier data signal is shown to be less than optimal does not vitiate the fact that it is disclosed." To further clarify, a prior art opinion that a claimed invention is not preferred for a particular limited purpose, does not preclude utility of the invention for that or another purpose, or even preferability of the invention for another purpose.

Applicant's remaining arguments rely on proposed amendments which has not been entered

Continuation of 10. Other: In response to applicant's inquiry of whether the drawings are acceptable, the drawings filed 3/15/01 are accepted by the Examiner. PTO-948 is not provided since there are no informalities in the original drawings and new corrected drawings are not required (MPEP 608.02(b)).